

BEFORE THE IOWA DEPARTMENT OF REVENUE  
HOOVER STATE OFFICE BUILDING  
DES MOINES, IOWA

IN THE MATTER OF  EBERT HONEY, LLC 14808 S. 102nd Ave. E Lynnville, IA 50153  SALES AND USE TAX	REFUSAL TO ISSUE DECLARATORY ORDER  DOCKET NO. 2019-300-2-0149
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Pursuant to a Petition for Declaratory Order (hereinafter referred to as “Petition”) filed with the Iowa Department of Revenue (hereinafter referred to as “Department”) by Ebert Honey, LLC (hereinafter referred to as “Ebert Honey” or “Petitioner”) on February 25, 2019, and in accordance with Iowa Code section 17A.9 and Iowa Administrative Code rule 701—7.24(17A), “Declaratory order-in general,” the Director issues the following ruling.

**I. FACTS**

The findings of fact are based on the Petition, further communications with Petitioner, and additional undisputed facts relevant to this Order.

Petitioner is a business that recently acquired a distributorship of plastic containers. Petitioner indicates that the plastic containers will mainly be sold to beekeepers for the packaging of honey or other food products. Petitioner, referring to item 10 under “qualifying farm machinery/equipment” on the second page of the form 31-014 Iowa Sales/Use/Excise Tax Exemption Certificate, states that “containers, labels, cartons, etc. used in agricultural production are exempt” from sales tax. Petitioner further argues that taxing plastic containers used for food packaging would constitute an indirect tax on otherwise exempt food.

## **II. ISSUE PRESENTED**

Petitioner presents one issue for review: Whether its sale of plastic containers to Iowa customers, who Petitioner states will mainly be beekeepers, is exempt from Iowa sales tax.

## **III. STANDARD OF REVIEW**

The function of a declaratory order is to provide “reliable advice from an agency as to the applicability of unclear law.” Arthur Earl Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731, 805 (1975). Iowa Code section 17A.9 contemplates declaratory orders by administrative agencies on a disclosed set of facts. *City of Des Moines v. P.E.R.B.*, 275 N.W.2d 753, 758 (Iowa 1979). A declaratory order enables the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. Bonfield, *supra*, at 822–23.

It is not the function of a declaratory order to resolve issues involving factual analysis “too complicated to handle outside of an actual adjudication.” *Id.* at 807. A declaratory order is not a “contested case” as defined in Iowa Code section 17A.2(5); namely, it is not an evidentiary hearing, which is a separate administrative remedy set forth in Iowa Code chapter 17A and in the Department’s rules. *See* Iowa Admin. Code r. 701—7.41(17A). Consequently, for the purposes of any declaratory order, the Director views the issues raised in the petition as questions of law applicable to future factual situations as disclosed in the petition. This view is consistent with Iowa Administrative Code rule 701—7.41(17A) concerning the issuance of declaratory orders.

## **IV. RULING**

For the reasons stated below, the Director refuses to issue a declaratory order in response to the Petition.

Pursuant to Iowa Administrative Code rule 701—7.24(1)(b), a petition for declaratory order must contain, among other things, the following:

- (1) A clear and concise statement of all relevant facts on which the order is requested;
- (2) A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law;
- (3) The questions the petitioner wants answered, stated clearly and concisely; [and]
- (4) The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers . . . .

The Petition does not meet these requirements. The Petition does not identify the specific statutes or rules on which Petitioner's arguments are based and lacks a discussion of particular factual circumstances applied to such statutes or rules that give rise to the questions Petitioner presents for review. Absent this information, the Director is unable to adequately respond to the questions raised in the Petition. Further, the Petition does not substantially conform to the required format provided in rule 701—7.24(1)(a).

Pursuant to Iowa Administrative Code rule 701—7.24(9), the Director therefore refuses to issue a declaratory order for the following reasons: (1) The Petition does not substantially comply with Iowa Administrative Code rule 701—7.24, and (2) the facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order. Pursuant to Iowa Administrative Code rule 701—7.24(9)(c), Petitioner may submit a new Petition that complies with the rules as discussed above.

Done at Des Moines, Iowa on this 25<sup>th</sup> day of April, 2019.

IOWA DEPARTMENT OF REVENUE

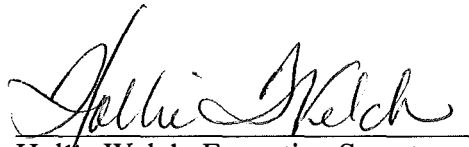
BY

  
Kraig Paulsen, Director

CERTIFICATE OF SERVICE

I certify that on this 25<sup>th</sup> day of April, 2019, I caused a true and correct copy of the Refusal to Issue Declaratory Order of the Director of Revenue to be forwarded by U.S. Mail or delivered to the following person:

Phil Ebert, Ebert Honey, LLC  
14808 S. 102nd Ave. E  
Lynnville, IA 50153

  
Hollie Welch, Executive Secretary  
Iowa Department of Revenue